

Final Statement of Reasons

for Rulemaking

**PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE AIR TOXICS
"HOT SPOTS" FEE REGULATION**

Public Hearing Date: October 22, 1998
Agenda Item No.: 98-11-1

California Environmental Protection Agency



Air Resources Board

State of California

AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Responses**

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FEE REGULATION, FISCAL YEAR 1998-99

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I. GENERAL

On October 22, 1998 the Air Resources Board (ARB) conducted a public hearing to consider the adoption of amendments to the Air Toxics "Hot Spots" Fee Regulation (Fee Regulation), sections 90700-90705, Title 17, California Code of Regulations (CCR). After considering the staff's recommendation, and the public's written comments and testimony, the ARB approved Resolution 98-50, the amendments to the Fee Regulation, sections 90700-90705, Title 17, CCR. As required by Health and Safety Code section 44380, the Fee Regulation is designed to recover the anticipated costs incurred by the ARB and the Office of Environmental Health Hazard Assessment (OEHHA) to implement the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Act) (Health and Safety Code sections 44300-44394) for the 1998-99 fiscal year.

The Fee Regulation establishes the share of the State's cost for each of the 35 Air Pollution Control Districts, or Air Quality Management Districts (district). The Fee Regulation establishes fee schedules for six districts. Each of the remaining twenty nine districts must adopt a fee rule that provides for the recovery of its share of the State's costs as well as the district's costs.

At the hearing, the Board considered the staff's recommendation and the public testimony. The Board then approved the proposed amendments with no modifications.

The following documents, which provide additional information about this rulemaking, are incorporated by reference herein:

- (1) Staff Report: Proposed Amendments to the Air Toxics "Hot Spots" Fee Regulation for Fiscal Year 1998-1999, released September 4, 1998.

Resolution 98-50 presents the findings of the Board and the Board's approval of the changes to the Fee Regulation. These changes are discussed in greater detail in the Staff Report (Initial Statement of Reasons, ISOR) made available to the public on September 4, 1998. These changes are summarized below.

- 1) Table 1 of the Fee Regulation was amended to reflect recalculations based on final facility data.
- 2) Table 2 of the Fee Regulation was amended to reflect changes in the districts' Program costs for the six districts requesting ARB adoption of their fee schedule. The Antelope Valley Air Pollution Control District (APCD) was added to Table 2 because they requested that the ARB to adopt their fee schedule. District costs for the South Coast Air Quality Management District (AQMD) and the Tuolumne County APCD were deleted from Table 2 since they did not request the ARB to adopt their fee schedule.
- 3) Facility fees in Table 3 of the Fee Regulation were amended to reflect the final State fee for each Facility Program Category, changes in the districts' Program costs, updated facility counts, and facility data corrections for the districts requesting that the ARB adopt their fee schedule. The Antelope Valley APCD was added to Table 3 because they requested the ARB to adopt their fee schedule. The information for the Great Basin Unified APCD, the Imperial County APCD, the Lassen County APCD, the Mojave Desert AQMD, and the Santa Barbara County APCD were amended to reflect the State fee for each Facility Program Category. The South Coast Air Quality Management District and the Tuolumne County Air Pollution Control District were deleted since they did not request the ARB to adopt their fee schedule.
- 4) Table 4 was amended to reflect changes in flat fees for Industrywide facilities as specified by the districts. Flat fees for Industrywide facilities and "District Update Facilities" in the Antelope Valley APCD were added to Table 4 because the district requested the ARB to adopt their fee schedule. Flat fees for Industrywide facilities in the Great Basin Unified APCD, the Imperial County APCD, Mojave Desert AQMD, and the Santa Barbara County APCD were revised to reflect the increase from \$25 to \$35 in the State fee Industrywide facilities will be assessed. Flat fees for Industrywide facilities and "District Update Facilities" in the South Coast Air Quality Management District and the Tuolumne County Air Pollution Control District were deleted from Table 4 since they did not request the ARB to adopt their fee schedule.
- 5) Appendix A of the Fee Regulation was amended such that the Air Toxics inventories, reports, or surveys for the Mojave Desert AQMD was deleted from Appendix A.

In accordance with section 11346.8 of the Government Code, the Board approved the amendment of sections 90700 through 90705, Title 17, CCR.

The ARB has determined that this regulatory action will not have a significant adverse impact on the environment and may indirectly benefit air quality by stimulating a reduction in emissions of both toxic and criteria pollutants. Health and Safety Code sections 44391 - 44394 require facilities, judged to pose a potential significant health risk, to lower their emissions below the significance level. This regulatory fee action will also fund district and ARB implementation of this risk reduction effort.

The determinations of the ARB concerning the costs or savings necessarily incurred in reasonable compliance with the proposed amendments to the Fee Regulation are presented below.

The ARB has determined that the amended Fee Regulation will impose a mandate upon and create costs to the districts with jurisdiction over facilities subject to the Act. However, the mandate does not require State reimbursement to the districts pursuant to Government Code sections 17500 et seq. and section 6 of Article XIII B of the California Constitution because the districts have the authority to levy fees sufficient to recover costs of the mandated Program (Health and Safety Code section 44380). These fees are intended to recover the full costs of district implementation of the Air Toxics "Hot Spots" Program, including compliance with the amended Fee Regulation. The estimated fiscal year 1998-99 district costs to implement the amended Fee Regulation are approximately \$308,969.

Pursuant to the amended regulation, some local and State government facilities must pay Hot Spots fees. In accordance with the Health and Safety Code section 44320, these facilities are subject to the Fee Regulation because: 1) they emit or use substances listed in Appendix A of the Emission Inventory Criteria and Guidelines Report incorporated by reference in Title 17, CCR, sections 93300.5, and release the specified quantity of at least one of the four "criteria pollutants" (total organic gases, particulate matter, nitrogen oxides, or sulfur oxides); or 2) they are listed on any current toxics use or toxics air emission survey, inventory, or report released or compiled by a district and 3) they are not exempted under any of the exemption criteria. The local and State government facilities that are affected by Hot Spots fees are some publicly-owned treatment works (POTWs), universities, hospitals, correctional institutions and laboratories.

The ARB has determined that adoption of the amended Fee Regulation will impose a mandate upon and create costs to some local POTWs. POTWs are subject to the Fee Regulation if they emit or use substances listed in Appendix A of the Emission Inventory Criteria and Guidelines Report, release the specified quantity of at least one of the four criteria pollutants, and are classified by the district in one of the prescribed Facility Program categories. The costs of complying with the Fee Regulation are not reimbursable within the meaning of section 6, Article XIII B, California Constitution and Government Code sections 17500 et seq., because POTWs are authorized to levy service charges to cover the costs associated with the mandated Program. ARB staff estimates the total cost for POTWs to comply with the Fee Regulation to be \$36,729 for fiscal year 1998-99.

The ARB has determined that adoption of the amended regulation will not create a significant cost to, or impose a mandate upon, local school districts. Currently, there are no local school districts subject to a "Hot Spots" Program fee.

The ARB has also determined that the amended Fee Regulation will impose costs on affected State agencies. The costs to the ARB to implement and administer the Air Toxics Hot Spots Program, including the amended Fee Regulation, will be recovered by fees authorized by Health and Safety Code section 44380 and sections 90700-90705 of Title 17, CCR. The costs for the ARB to develop and implement the amended Fee Regulation are estimated to be \$114,000. The Office of Environmental Health Hazard Assessment (OEHHA) incurs no cost to implement the Fee Regulation.

Other affected State agencies (e.g., universities, hospitals, correctional institutions, laboratories) that must pay fees pursuant to the amended Fee Regulation as emitters of specified pollutants should be able to absorb their costs within existing budgets and resources. Costs to these State agencies were estimated to total \$18,312 for fiscal year 1998-99.

The ARB has determined that the amended Fee Regulation will not create costs or savings in federal funding to any State agency or program.

The ARB has determined, pursuant to Government Code 11346.5(a)(3)(B), that the regulation will affect small business. Based on an assessment made, the Executive Officer has determined there is a potential cost impact on private persons or businesses directly affected by the Regulation. The Executive Officer has also determined that adopting these amendments may have a significant, adverse economic impact on some businesses operating with little or no margin of profitability, including the ability of California businesses to compete with businesses in other states.

In accordance with Government Code section 11346.3, the ARB has determined that for businesses operating with little or no margin of profitability, the proposed regulatory action may affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within California, or the expansion of businesses currently doing business within California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

In considering the proposed amendments, the ARB has determined that no alternative considered by the agency would be more effective in carrying out the purposes for which the amendments are proposed or would be as effective and less burdensome to affected private persons than the proposed action. The imposition of the fees and the requirement that the fees, in the aggregate, cover reasonable anticipated costs of implementing the Program, are

mandated by statute. However, the Fee Regulation includes a cap on fees for small businesses in those districts for which ARB is adopting a fee schedule. Additionally, exemptions will relieve lower risk facilities from paying any fee. These provisions are meant to minimize the burden of the regulation.

Furthermore, the ARB evaluated the alternatives to the proposed amendments submitted to the ARB pursuant to Government Code section 11346.5(a)(7). The ARB considered whether there is a less costly alternative, or combination of alternatives, which would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed amendments. The ARB determined that there is no such alternative or combination of alternatives.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSES

The ARB received written and oral comments in connection with the 45-day comment period following the release of the Initial Statement of Reasons. The comments received in connection with the 45-day comment period are found under General Comments. A list of commenters is set forth below, identifying the date and form of all comments that were filed in a timely manner. Following the list is a summary of each objection or recommendation made regarding the proposal, followed by the agency response with an explanation of what action has been taken to accommodate the objection or recommendation, or the reasons for making no change.

General Comments Regarding the Proposed Amendments to the Fee Regulation for Fiscal Year 1998-99 Received During the 45-Day Comment Period and at the October 22, 1998 Hearing

The ARB received the written and oral comments listed below during the Notice of Public Hearing 45-day comment period. In the discussion of comments and responses following this list, the commenter is identified by his or her last name.

- (1) September 24, 1998 letter from Daniel A. Cunningham, Executive Director, Metal Finishing Association of Southern California, Inc., to Linda C. Murchison, Chief, Emission Inventory Branch, ARB. (Cunningham)
- (2) September 25, 1998 letter from Carol Foss McCracken, Vice President, Metal Finishing Association of Southern California, Inc., to Linda C. Murchison, Chief, Emission Inventory Branch, ARB. (McCracken)

- (3) October 14, 1998 letter from Kenneth Corbin, Air Pollution Control Officer, Feather River Air Quality Management District, to Linda C. Murchison, Chief, Emission Inventory Branch, ARB. (Corbin)
- (4) October 15, 1998 letter from Michael Kussow, President, California Air Pollution Control Officers Association, to Pat Hutchens, Clerk of the Board, ARB. (Kussow)
- (5) October 21, 1998 letter from Richard J. Smith, Assistant Director, San Diego County Air Pollution Control District, to Pat Hutchens, Clerk of the Board, ARB. (Smith)
- (6) October 21, 1998 letter from Jeff Sickenger, Environmental Issues Coordinator, Western States Petroleum Association, to Linda C. Murchison, Chief, Emission Inventory Branch, ARB. (Sickenger)

Oral Testimony Presented at the October 22, 1998 Hearing of the Air Resources Board

- (7) Christopher J. Walker, Legislative Advocate, Nossaman, Guthner, Knox, and Elliott, LLP, representing the California Service Station and Automotive Repair Association. (Walker)

Comments Supporting the Proposed Amendments

1. Comment: Supports the ARB staff's proposed amendments to the Air Toxics "Hot Spots" Fee Regulation for fiscal year 1998-99. (Kussow, Sickenger, Walker)

Agency Response: The ARB appreciates this comment and responds as follows. The ARB approved the amendments to the Fee Regulation for fiscal year 1998-99 at the October 22, 1998 hearing.

2. Comment: Supports the ARB staff's proposed reduction in Air Toxics "Hot Spots" Program fees for fiscal year 1998-99. (Smith)

Agency Response: The ARB approved the amendments to the Fee Regulation for fiscal year 1998-99 at the October 22, 1998 hearing. These amendments included reductions in State costs to administer the Air Toxic "Hot Spots" Program. The State has reduced costs in an effort to reduce the fiscal impact Air Toxics "Hot Spots" Program fees have on businesses subject to those fees. Although there will be a reduction in support to the districts and the general public, and a reduction in the resources the ARB and OEHHA can dedicate to a number of tasks, we believe the State staff resources are adequate to satisfactorily implement the Program.

Comments Concerning the Need For an Alternative Mechanism For Funding State Program Costs Other Than Fees

3. Comment: The California Air Pollution Control Officers Association has a committee discussing the future of the Air Toxics "Hot Spots" Program. ARB assistance is necessary to develop legislative changes to appropriate monies from the State of California's General Fund to support the State portion of Program costs. This is the most appropriate funding method. (Cunningham, Kussow, Sickenger, Smith, Walker)

Agency Response: The ARB directed staff on October 22, 1998 to create a Stakeholders Committee, and to meet with Program stakeholders with the goal of drafting legislative language which appropriates the State's Air Toxics "Hot Spots" Program costs from the State of California's General Fund.

4. Comment: The Air Resources Board should organize their own workshop to discuss different funding mechanisms for the Program. (Cunningham)

Agency Response: The ARB directed staff on October 22, 1998 to create a Stakeholders Committee, and to meet with Program stakeholders with the goal of drafting legislative language which appropriates the State's Air Toxics "Hot Spots" Program costs from the State of California's General Fund.

Comments Concerning the Assessment of Air Toxics "Hot Spots" Program Fees

5. Comment: The Feather River Air Quality Management District states that three facilities in the District should be exempt from Air Toxics "Hot Spots" Program fees based on Health and Safety Code section 44380.1. The District requests that the ARB exempt the facilities from Program costs. (Corbin)

Agency Response: The Program status of the three facilities is currently under review. The ARB has requested additional documentation from the District for the three facilities. If that information supports the District's findings, the ARB will work with the District and will waive the Program fees for the three facilities using the fee waiver procedures currently in place.

6. Comment: The ARB's proposed \$10 increase in fees assessed industrywide facilities, from \$25 to \$35, should be increased. The fee assessed industrywide facilities should be increased to provide substantial relief in the Program fees assessed larger facilities. (Cunningham, McCracken)

Agency Response: Industrywide facilities are generally small businesses for whom the districts complete all their Program requirements. Examples of industrywide facilities include: gasoline service stations, dry cleaners, autobody shops, and printers. ARB staff spent a great deal of time evaluating what was an appropriate fee for these industrywide facilities. We concluded

that considering the resources invested in evaluating industrywide facilities and our goal to not cause any additional economic burden to these small businesses, that the \$10 fee increase was the most appropriate.

Comments Concerning the Proposed Amendments in General

7. Comment: The State should reduce its Air Toxics "Hot Spots" Program beyond the State budget currently proposed. (Cunningham)

Agency Response: The State's proposed Air Toxics "Hot Spots" Program budget for fiscal year 1998-99 is \$1.27 million. This represents an \$80,000, or 6%, reduction below the State's Program costs of \$1.35 million for fiscal year 1997-98. It also represents a 76% reduction in State Program costs since fiscal year 1993-94.

The \$1.35 million level represents the State's Program maintenance level which staff had identified as being necessary to maintain an effective Program. So the State will be operating at \$80,000 below the Program's basic maintenance level. Any further reductions in State costs would impair the State's ability to implement the Program requirements mandated by statute. In light of these factors, the ARB and OEHHA do not agree that additional Program budget cuts be made.

8. Comment: The Air Toxics "Hot Spots" Program should not continue as it now exists. Its goals and objectives have been achieved. The State should refocus the Air Toxics "Hot Spots" Program on mobile and area-wide sources of emissions and on industrywide facilities. (Cunningham)

Agency Response: The goals and objectives of the Air Toxics "Hot Spots" Program have not been fully achieved. Further facility evaluations still need to be completed, including emission inventory, health risk assessment, and health risk reduction work. The Air Toxics "Hot Spots" Program is focused, by statute, on stationary sources, the individual facilities emitting listed toxic substances. Industrywide facilities are considered stationary sources and are being evaluated under the Program. The legislation required the ARB to inventory emissions from mobile and area sources. That statutory requirement was completed in 1990. A change in legislation would be necessary for the inclusion of mobile and area sources in the Program on an ongoing basis.

9. Comment: The State could base the allocation of the district's portion of State program costs on the percentage of the State's population residing in their jurisdiction. (Smith)

Agency Response: During the development of the proposed amendments to the Air Toxics "Hot Spots" Fee Regulation for fiscal year 1998-99, the State evaluated just such a method. We determined that it would result in unworkable allocations to the districts. The best example of the results of implementing such a fee allocation method can be taken from an actual example of a district with a moderate population, but a small industrial base. This district's allocation of State

Program costs would be approximately \$10,000, based on the district's population, but the district only has ten industrywide facilities subject to Program costs. If a population-based fee allocation methodology were implemented, those ten small businesses would each be responsible for \$1,000 of the district's allocation. Using the proposed amendments, these ten facilities will be assessed a Program fee of \$35 each.

Since each district has different numbers of facilities, different types of facilities, and different rates of exempting facilities based on the most recent emission inventory data, using a population-based method to allocate the State portion of Program costs to districts would result in similar facilities in different districts being assessed very different Program fees. The ARB did not support this alternative fee allocation methodology due to these irregularities.

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